

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

THEODORE W. SMITH, III,

Plaintiff,

v.

CORRECTIONAL OFFICER BINGHAM,

Defendant.

Case No. 1:17-cv-128

Barrett, J.  
Bowman, M.J.

**REPORT AND RECOMMENDATION**

Plaintiff, an incarcerated individual who proceeds *pro se*, filed suit against a correctional officer employed at the Southern Ohio Correctional Facility, alleging the Defendant used excessive force against him in violation of the Eighth Amendment. On February 28, 2017, the undersigned granted Plaintiff's motion to proceed without payment of fees, and directed the U.S. Marshal to serve the Defendant as directed by the Plaintiff. (Docs. 2, 4). On March 30, 2017, Plaintiff filed a motion for default judgment, alleging that Defendant Bingham had failed to file any timely answer to his complaint.

Plaintiff is mistaken. The record reflects that summons was issued on February 28, 2017, but that service was not effected until March 23, 2017. Therefore, Defendant's answer was not due until April 13, 2017. (Docs. 5, 8). Defendant Bingham, through counsel, timely filed an Answer on April 13, 2017. (Doc. 7). Therefore, **IT IS RECOMMENDED THAT** Plaintiff's motion for default judgment (Doc. 6) be **DENIED** as moot.

s/ Stephanie K. Bowman  
Stephanie K. Bowman  
United States Magistrate Judge

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**NOTICE**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).